

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Rajarshi Bharadwaj

C.R.A. 660 of 2015

Reksona Bibi @ Eksona

-Vs-

State of West Bengal

For the Appellant :

Mr. Shiladitya Sanyal, Sr. Advocate,
Mrs. Sanghita Chatterjee,
Mr. Khalid Hasan,
Ms. Pallabi Chatterjee.

For the State :

Mr. Neguive Ahmed,
Md. Anwar Hossain.

Heard on :

29.11.2017

Judgement on:

29.11.2017

Joymalya Bagchi, J. :-

A ghastly murder and rape of a four year old child namely, Nasrina Khatoon is the subject matter of the instant appeal.

The appellant and her minor sons viz., Fatick Mondal @ Isha and Saiful Mondal were accused of the murder and rape of the minor. As Fatick and Saiful were found to be juveniles at the time of commission of

the offence, their cases were segregated and the appellant faced the trial in Sessions Case No.4(4) of 2014 (Spl.) and Sessions Trial No.III (XI) of 2014 before the learned Additional District and Sessions Judge, 2nd Court, Krishnagar, Nadia. The genesis of the case can be traced to a written complaint lodged by the father of the victim Hasem Mandal, P.W.3 who alleged that on 27.12.2013 his youngest daughter went missing at about 10.00 A.M. while she was playing on the roadside before their house. He searched for her but could not trace her out. A missing Diary was lodged at Nabadwip Police Station being G.D.E.No.1436 dated 27.12.2013. As he could not find his daughter in the neighbourhood, he started search in other houses. They went to search the house of Sadar Mondal but his wife Reksona Bibi @ Eksona Bibi i.e. the appellant herein and her sons Fatick and Saiful restrained them from doing so. As a result, they kept vigil over the house of Sadar Mondal. It is further alleged that around 5.30 P.M. in the evening, one Manchur Mandal, P.W.2 saw the appellant heading alone towards a bamboo orchard with a sack and her sons were patrolling in front of the house. Manchur Mandal focused his torch towards the appellant and asked her what she was carrying. Hearing this, she dropped the sack. Manchur Mandal raised a hue and cry and everyone including Hasem Mandal came at the place of occurrence. The sack was taken to the roadside and in the light of the street lamp, the sack was opened and the dead body of the victim was recovered from the sack. On such

complaint, First Information Report being Nabadwip Police Station Case No.724 of 2013 dated 27.12.2013 under Sections 376A/377/302/201/120B/34 of the Indian Penal Code was registered against the appellant and her minor sons. P.W.19 who conducted investigation in the instant case came to the place of occurrence and seized the sack along with the dead body. He also seized a steel trunk from the residence of the appellant wherein the dead body was alleged to have been kept. In conclusion of investigation, charge sheet was filed against the appellant and the other accused persons. Charge was initially framed against the appellant under Section 302/201 of the Indian Penal Code but subsequently separate charges under Section 302 of the Indian Penal Code and Section 201 of the Indian Penal Code were framed. The appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined as many as 19 witnesses and exhibited a number of documents. The defence of the appellant was one of innocence and false implication. In conclusion of trial, the trial judge by its judgement and order dated 5th May, 2015 convicted the appellant for commission of offence punishable under Section 302/201 of the Indian Penal Code and sentenced her to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months more for the offence punishable under Section 302 of the Indian Penal Code and to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/-, in default, to

undergo rigorous imprisonment for three months more for the offence punishable under Section 201 of the Indian Penal Code; both the sentences to run concurrently.

Mr. Shiladitya Sanyal, learned Senior Counsel with Mrs. Chatterjee appearing for the appellant argued that the prosecution case which is based on circumstantial evidence and has not been proved beyond reasonable doubt. Manchur Mandal, P.W.2 has not supported the prosecution case and the chain of circumstances connecting the appellant with the alleged crime had, therefore, snapped. It is also argued that the evidence of P.W.3, the father of the victim is at variance with his earlier statement before the Police. He accordingly prayed for acquittal of the appellant.

Mr. Ahmed, learned Counsel appearing for the State submits that the conduct of the appellant immediately prior to the recovery of the dead body was suspicious as she has resisted PW3 from entering her house. It is also submitted that the dead body was recovered near the house of the appellant and a steel trunk in which the dead body was kept, was recovered from her house. She failed to explain the aforesaid circumstances and accordingly, the conviction does not call for interference.

I have examined the evidence on record. I note with deep anguish though the most vital witness in the instant case viz., Manchur Mandal, P.W.2 has not supported the prosecution case, he was not declared

hostile and cross examined. It has been alleged in the First Information Report that Manchur Mandal had seen the appellant to carry a sack out of her house in the evening of 27.12.2013 and had asked her where she was going. Hearing this, she dropped the sack and subsequently that the dead body of the victim was recovered from the said sack. The said witness, however, has not supported the prosecution case at all in Court. He kept mum about the aforesaid circumstances stated that he did not know the cause of and death of the victim. Most strangely, the prosecutor-in-charge who conducted the prosecution did not even declare the said witness hostile and cross examine him. In the absence of any cross-examination of Manchur Mandal, there is no other alternative but to accept his version in Court that he is wholly unaware as to the circumstances leading to the death of the victim.

In this backdrop, I have scanned the evidence of the other witnesses with utmost scrutiny in an effort to unravel the truth of this heinous offence.

P.Ws.3 and 4 are the parents of the victim. P.W.3 is the father of the victim and the defacto complainant. He stated that the victim had gone with his mother to fetch water from a tap near the house. His wife came back alone while his daughter continued to play near the tap. Thereafter, she could not be found. They went to Mayapur Out Post and the police advised them to go to Nabadwip Police Station. He saw the daughter in the house of Reksona Bibi. His daughter was kept in a box

in the house of Raksona Bibi. He lodged written complaint. He put his L.T.I. thereon.

In cross-examination, he stated that in his F.I.R., he did not state the names of the person who were searching the place. He stated to Nabadwip Police Station that his daughter was recovered from a box belonging to the accused persons. The size of the box was 3 X 1 ½'.

P.W.4 deposed that on 28th December, 2013 at about 10.00 A.M. she along with her daughter Nasrina Khatoon had gone to the tap to clean clothes. She returned home after cleaning clothes and her daughter continued to play near the tap. Thereafter, her daughter went missing. They searched for her daughter. The appellant did not allow them to enter their house. They stated that a child lifter had taken their daughter. During search, they recovered a box belonging to the appellant. The dead body was packed in a sack and was kept in the box. They informed Nabadwip Police Station. Police recovered the dead body of her daughter at 6.00 P.M.

In cross-examination, she stated that there was no quarrel between her and the accused persons.

P.W.5 is the maternal uncle of the victim and was a witness to the seizure of a tin box from the house of the appellant. He put his signature thereon. The tin box has been identified as material Ext.1. He deposed that on 27.12.2013 he was called by his sister P.W.4 to their house and was informed that the victim was missing. They went to search for the

victim. The dead body of the victim was recovered from a box belonging to the appellant. Police held inquest over the dead body by the victim. He put his signature on the inquest, Ext.3.

P.W.6 is a local resident. He deposed that he did not know the reason of the death and that the dead body of the victim was recovered from a bamboo orchard.

P.Ws. 7 and 9 are local residents but they have stated nothing about the cause of death.

P.W.10 was a Constable attached to Nabadwip Police Station at the material point of time. He brought the wearing apparels of the victim from N. R. S. Medical College and Hospital, Kolkata and handed it over to the I.O., S. I. Snehasish Das, P.W.19.

P.W.11 was posted at Haringhata Police Station. He arrested the minor accused Fatil Mandal.

P.W.13 is another local resident who stated that one tin trunk was recovered from the house of the appellant.

P.W.14 is the grand mother of the victim. She deposed that her daughter-in-law i.e. P.W.4 along with the victim had gone to the tap to clean clothes. Nasrina was also playing with the other children in the Court yard of the appellant. P.W.4 returned home and went back to call her daughter, Nasrina. She was not found there. Saiful stated that her grand daughter had been kidnapped by some one. In the evening, the

dead body of the victim was recovered from the house of the appellant from a tin box.

In cross-examination, she stated that she did not state to the police that her daughter-in-law along with Nasrina had been to the tap for cleaning clothes and that Nasrina was playing with other children in the Court yard of Reksona Bibi. She did not state to the police that in the evening, her body was recovered from the house of Reksona in a tin box.

P.W.15, Dr. Samaresh Chandra Nath is a Doctor who was posted at Nadia District Hospital. He referred the dead body of the victim to N.R. S. Medical College and Hospital, Kolkata for post mortem examination. He proved the referral certificate, Ext.4.

P.W.16 is a local resident. He deposed that the victim was murdered by the appellant and her sons.

P.W.17 held post mortem examination over the dead body of the victim and found the following injuries :-

- 1. one abrasion 0.3" x 0.2" over left side of forehead, 0.7" left side of midline, ½" above eye brow;*
- 2. one abrasion 0.2" x 0.2" over left side of forehead, 2" left to midline, 1" above eye brow;*
- 3. four linear abrasion ¼" each over upper surface of tongue, placed one semicircular line with convexity forward and the line ½" proximal to outer border of tongue;*
- 4. one abrasion over lower lip 1 ½" ½";*

5. *one bruise over upper lip 1 ½" x ½"*;
6. *three linear scratch abrasion ¼" to ½" in length over left side of chin and adjacent part of neck over an area ½" x 1"*;
7. *three linear scratch abrasion 1" in length each, placed obliquely almost parallel to each other over an area 1½" x 1" over left side of neck, 1½" left to midline 2" above left Sterno-clavicular junction;*
8. *one abrasion 0.2" x 0.2" over left side of neck, 2 ½" left to midline 1½" below left angle of mandible;*
9. *one abrasion 1½" x 1" over right side of neck 1½" of right to midline, 2" below right angle of mandible;*
10. *one liner abrasion 1" in length over lateral aspect of dorsum of right foot at the root of little toe placed transversely;*
11. *one abrasion 0.1" x 0.1" over left flank of abdomen, 3" left to midline just above antero-superior iliac spine;*
12. *one bruise ½" x ¼" over anterior aspect of left leg 5" below knee joint;*
13. *one bruise ½" x ¼" over anterior aspect of left leg 6" below knee joint;*
14. *one bruise ½" x ¼", ½" left to injury no. 12;*
15. *one pin-point abrasion over left heel 1" below left medial malleolus;*
16. *one bruise 1" x ½" almost transversely placed over medial aspect of left thigh, 2" above knee joint;*
17. *one abrasion 1" x ½" over posterior aspect of left elbow;*
18. *one abrasion 1" 0.2" over posterior aspect of left forearm, 1" below joint;*
19. *one bruise 4" x 2½" over posterior aspect of abdominal wall of midpart around midline;*
20. *one bruise 1" x ½" over right side of labia majora;*

21. one bruise 1" x ½" over left side of labia majora;
22. one bruise 1" x 0.1" over right side of labia minora;
23. one bruise 1" x 0.2" over left side of labia minora;
24. one abrasion 0.2" x 0.2" over left side of labia majora;
25. tear with extravasation of blood at 2 O'clock, 4 O'clock, 7 O'clock, 9 O'clock position of hymen;
26. vaginal introitus severely lacerated and markedly widened with loss of fourchette and fossa navicularis;
27. one abrasion 1½" x ½" over posterior vaginal wall;
28. One lacerated wound 1" x ½" X muscle and anal sphincter at the left side of anus;
29. One L.W. 1" X ½" muscle and anal sphincter at the left side of anus. These laceration wound injury the muco-cutaneous junction of anal canal with extravasation of blood in an around with wide gaping of anus.

On dissection I found the following:

- i) Deep bruise 2½" x 2" in the middle over left side of anterior aspect of neck 1" left to midline;
- ii) Deep bruise 1½" x 1" in the muscle of neck over right side of anterior aspect of neck, 1½" right to midline;
- iii) Sub-laxation of greater cornu of hyoid bone with extravasation of blood in the surroundings;
- iv) One bruise 1" x ½" over posterior wall of oesophages at the left of C4 vertebrae. The abrasion bright red in colour, non-scabbed. The bruise red in colour. The margin of L.W. Irregular and extravasated blood in an around.

He opined that the death was due to the effect of manual strangulation associated with sexual assault, as noted above which are ante-mortem and homicidal in nature. He proved his signature on the post mortem report, Ext.5.

P.W.19 is the Investigating Officer of the instant case. He deposed that on 27.12.2013 he was posted at Mayapur Out Post. At that time, S.I., Bivash Sen was the duty officer in the said police station. He received a written complaint from P.W.1 and started the instant case. He filled up the formal First Information Report, Ext.7. He visited the place of occurrence and prepared rough sketch map with index. The entire seizure list is marked Ext.9. He examined available witnesses under Section 161 of the Code of Criminal Procedure. He seized a nylon sack under a seizure list. The seizure list was prepared and signed by him, Ext.1/1. He tagged the inquest report to the Case Diary. He collected the post mortem. He forwarded the accused persons for the medical examination. He submitted charge sheet.

In cross-examination, he stated that in the First Information Report it was written that the appellant took one sack and Manchur saw her by torch and upon asking she dropped the same at the orchard and fled away. He stated that place of occurrence is beneath of a tree. Place of occurrence is 83' away from the road and 43' away from the house of the accused. Place of occurrence is 120' away from the house of the

Nousad. He seized tin box from the house of Reksona on 29.12.2013 at about 6.45 P.M. He seized the nylon bag wherefrom the dead body was recovered. He did not send the nylon bag and tin box for F.S.L. examination.

These witnesses unfortunately do not help the prosecution to connect the appellant with the crime. Although P.W 3, P.W 4 and P.W 14 stated that the dead body of the victim was found in a tin box inside the house of the appellant, their versions are not supported by the Investigating Officer, P.W 19 who stated that the dead body of the victim was found in a sack under a tree which is situated 43 ft. away from the house of the appellant. On the next day, the tin box was recovered from the house of the appellant. No effort was made to send the sack and the tin box for forensic examination in order to determine as to whether the body of the victim had been kept in the tin box. Stray statement by P.W 14 for the first time in Court that the victim was playing in the Courtyard of the appellant prior to the incident is an embellishment and is not supported by other witnesses. Hence, the said circumstance cannot be said to have been proved. In the absence of any link evidence connecting the tin box and the recovery of the dead body in a sack under a tree which is situated 43 ft. away from the house of the appellant and the fact that Manchur Mandal, P.W 2 did not support the prosecution case in Court, I am constrained to hold that the prosecution has not been able to prove its case beyond reasonable doubt.

I, however, feel extremely distressed at the casual and callous manner in which the investigation and prosecution in the instant case relating to murder and rape of a four- year aged child was conducted. Seized articles like the sack and trunk which could have provided important link evidence were not sent for chemical examination. The most vital witness, namely, P.W 2 Manchur Mandal who did not support the prosecution case in Court was not declared hostile and cross-examined. No doubt that suspicion, howsoever strong, cannot take the place of proof and, therefore, in the face of such flimsy and weak evidence, I have no alternative but to acquit the appellant on the anvil of the benefit of doubt.

However, acquittal in such cases where one cannot deny the homicidal death of a vulnerable victim like a child of four years, leaves behind an unpleasant and brooding thought in one's mind that the crime remains undetected and the offender goes unpunished. There is no closure in the minds of the hapless parents as the offender is unpunished and the State forfeits its sovereign commitment to uphold the rule of law and punish the guilty.

In order to pre-empt future recurrences of similar nature, I feel the need to pass the following directions in the matter of conducting of investigation and/or trial in cases involving murder and/or rape of minor children or other vulnerable victims.

Accordingly, I direct that:-

- (a) In cases involving grave offences like murder and/or rape of minor children or other vulnerable victims, statement of vital witnesses must be recorded under section 164 Cr.P.C.;
- (b) Forensic examination of seized articles including DNA examination, if necessary, which may provide vital link evidence to establish the guilt be mandatorily conducted;
- (c) Adequate protection be extended to witnesses to ensure that they are not won over and do not resile from their previous statements during trial by implementing effective Witness Protection Programmes in that regard;
- (d) Public Prosecutors of the district must regularly review the manner in which the Public Prosecutor in Charge of sensitive cases are conducting the trial on a periodic basis and reports be filed in that regard to the Directorate of Prosecution, Legal Remembrancer and the Principal Secretary, Home Department for their appraisal and guidance.

The appeal is allowed with the aforesaid directions.

Appellant shall be released from custody upon executing a bail bond to the satisfaction of the learned CJM, Krishnagar, Nadia which shall be continued for a period of six months in terms section 437A Cr.P.C.

Advance copy of this judgment be sent to the Correctional Home forthwith.

Copy of this judgment be sent to the Principal Secretary, Home Department, Government of West Bengal, Director General of Police, West Bengal, Directorate of Prosecution and the Legal Remembrancer for issuance of necessary directions as indicated in this judgment in conducting investigation and/or trial of sensitive cases involving murder and/or rape of minor or other vulnerable victims.

Let a copy of this judgment along with the lower Court records be forthwith sent down to the trial Court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

(Joymalya Bagchi, J.)

I agree.

(Rajarshi Bharadwaj, J.)